Supreme Court, U.S.
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No. 94-2011

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

RAY QUALMANN MARINE CONSTRUCTION, INC.,

Petitioner,

vs.

KIMBERLY ANN SAN, Individually and as Personal Representative of the Estate of LAZARO JESUS SAN, Deceased,

Respondent.

Petition for Writ of Certiorari to the District Court of Appeal of the State of Florida for the Fourth District

REPLY BRIEF

CHRISTIAN DAVID KEEDY
Counsel of Record
KELLEY DRYE & WARREN
Attorneys for Petitioner
2400 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131-2399
(305) 372-2400

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QUESTION PRESENTED FOR REVIEW

Whether the survivors of a harbor worker killed in territorial waters of the State of Florida are entitled to recover non-pecuniary damages following this Court's decision in ***Miles v. Apex Marine Corp.***, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 285 (1990).

LIST OF PARTIES

Petitioner: Ray Qualmann Marine Construction, Inc.
Respondent: Kimberly Ann San, Individually and as Personal Representative of the Estate of Lazaro Jesus San, Deceased

Ray Qualmann Marine Construction, Inc. had an insurance policy with New York Marine & General Insurance Company, but that insurer has denied coverage to the Petitioner.

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STATUTES:

Longshore and Harbor Workers Compensation
Act, 33 U.S.C. § 901 *et seq.* 1

REPLY BRIEF

Ray Qualmann Marine Construction, Inc., pursuant to Rule 15 of this Court, replies briefly to issues raised by the Respondent.

The Respondent suggests that the Petitioner has ignored Lazaro San's legal status or classification as a harbor worker. That is inaccurate. The decision below was based upon this Court's holding in ***Sea-Land Services v. Gaudet***, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9 (1974), which clearly dealt with a longshoreman. However, the 1972 amendments to the Longshore and Harbor Workers Compensation Act, 46 U.S.C. § 901 *et seq.*, and this Court's decision in ***Miles v. Apex Marine Corp.***, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 285 (1990) have rendered ***Gaudet*** meaningless, i.e. it has no legal effect.

The Respondent's suggestion that the issues raised by the Petitioner are of little legal significance is belied by the fact that this Court has granted two petitions for writs of certiorari in cases which raise very similar, although not the same, legal issues.

This Court granted certiorari in ***Calhoun v. Yamaha Motor Corp., U.S.A.***, 40 F.3d 622 (3d Cir. 1994), *cert.* granted, 63 U.S.L.W. 3832 (May 22, 1995)(No. 94-1387), and in ***Korean Air Lines Co., Ltd. v. Zicherman***, 43 F.3d 18 (2d Cir. 1994), *cert.* granted, 63 U.S.L.W. 3753 (April 17, 1995)(No. 94-1361 and No. 94-1477), and should similarly grant certiorari in this case. All three cases should be considered together for judicial economy to resolve

conflicts concerning the application of federal maritime law in cases involving deaths occurring on navigable waters. Determination of the issues presented in the ***Calhoun*** and ***Korean Air Lines*** cases will not resolve the issue presented in the Petition herein.

In ***Calhoun v. Yamaha Motor Corp. U.S.A.***, this Court has granted a petition to review whether the damages available to survivors of the victim of a fatal recreational boating accident that occurred in navigable territorial waters are determined under state law, rather than according to general federal maritime law. A question presented in ***Korean Air Lines Co. v. Zicherman***, is whether non-pecuniary damages for loss of society are recoverable for death occurring on the high seas during the course of international air transportation. The Petition herein seeks a determination of whether the survivors of a harbor worker killed in territorial waters of Florida are entitled to recover non-pecuniary damages under federal maritime law.

The current significance of this Court's decisions in ***Sea-Land Services, Inc. v. Gaudet***, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d (1974), and in ***Miles v. Apex Marine Corp.***, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 285 (1990) are material to all three of these cases. By granting the petitions in ***Calhoun*** and ***Korean Air Lines***, this Court has recognized the importance of clarifying the federal maritime law concerning wrongful deaths. However, determinations in those two cases will not address the issue raised in this case because they do not involve harbor workers.

This Court five years ago in ***Miles*** spoke of establishing uniformity concerning damages recoverable under the federal general maritime law. The cases referred to above,

as well as others cited in the Petition in this case, reflect that neither uniformity nor clarity have been achieved. Because of the repeated narrow construction placed on this Court's decision in ***Miles v. Apex*** and misinterpretation of the current status of the ***Gaudet*** decision, it can be readily seen that decisions in the ***Calhoun*** and ***Korean Air Lines*** cases will not resolve the issue presented in the Petition herein. Decisions once and for all determining damages recoverable under federal maritime law inside and outside territorial waters for the deaths of seamen, harbor workers, longshoremen, passengers, and all others are needed. This case, ***Calhoun*** and ***Korean Air Lines***, when combined with the holding in ***Miles***, will provide that legal precedent.

CONCLUSION

It is respectfully submitted that granting the Petition herein and having this case considered with the ***Calhoun*** and ***Korean Air Lines*** cases would be an efficient use of this Court's time and resources. Resolution of all three of these cases would clarify maritime law concerning damages in wrongful death cases, and would substantially reduce future litigation concerning this subject. The study and analysis necessary to resolve the issues presented in this Petition will have been done during this Court's analysis of the ***Calhoun*** and ***Korean Air Lines*** cases. Disposition of this case should require no additional labor or analysis by this Court, and the Petition should be granted.

CHRISTIAN DAVID KEEDY
Counsel of Record
KELLEY DRYE & WARREN
Attorneys for Petitioner
2400 Miami Center
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 372-2400